

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

OMEGA CONSULTING, as Assignee
of D.W. Dickey & Sons, Inc.,

Plaintiff,

v.

NORTHERN FERTILIZER &
CHEMICAL CO., INC.,

Defendant.

CASE NO. 4:09CV1333

JUDGE PETER C. ECONOMUS
Magistrate Judge George J. Limbert

REPORT AND RECOMMENDATION

On December 31, 2009, the undersigned issued an order to show cause why the instant case should not be dismissed for failure to perfect service of the Complaint within 120 days of filing. ECF Dkt. #6. The undersigned ordered Plaintiff to show cause on or before January 14, 2010 why his Complaint of June 11, 2009 should not be dismissed for failure to perfect service as required by Rule 4(m) of the Federal Rules of Civil Procedure. As of today's date, Plaintiff has made no showing to excuse his failure to comply with Rule 4(m). Accordingly, the undersigned **RECOMMENDS** that the Court **DISMISS** the instant suit in its entirety **WITHOUT PREJUDICE**. *See Reynosa v. Schultz*, 282 Fed.Appx. 386, n. 5 (6th Cir. 2008) ("Rule 4(m) requires, when a district court dismisses an action for failure of service, that it do so 'without prejudice.'").

Date: January 29, 2010

/s/ George J. Limbert
GEORGE J. LIMBERT
U.S. MAGISTRATE JUDGE

ANY OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within fourteen (14) days of service of this notice. Fed. R. Civ. P. 72; L.R. 72.3. Failure to file objections within the specified time may constitute a **WAIVER** of the right to appeal the Magistrate Judge's recommendation. L.R. 72.3(b).